

Office of the Attorney General  
State of LOUISIANA

Opinion No. 79-980A  
December 4, 1979

71-1-1 Municipal Fire and Police Civil Service

Re: Opinion No. 79-980 is recalled. Computation for seniority begins when the employee is regularly and permanently employed. Regular and permanent employment commences only upon express or implied confirmation by the appointing authority. LA. R.S. 33:2473(2) + (18) and s 2495; Opinion 77-1301 reinstated.

Mr. Maxie E. Cox

State Examiner  
Municipal Fire and Police Civil Service  
4664 Jamestown Avenue  
Suite 300  
Baton Rouge, LOUISIANA 70808

Dear Mr. Cox:

This recalls Attorney General Opinion Number 79-980, which issued pursuant to the request of Chief W. T. Miller, Baton Rouge Fire Department, dated August 28, 1979.

The questions presented in Opinion Number 79-980 were as follows:

'Firefighter No. 1 was employed January 1, 1978, and certified July 1, 1978; Fire-fighter No. 2 was employed December 15, 1977, but was not certified until December 15, 1978. Which of the two has the most seniority and who should be promoted to the next class first, after both have passed all necessary examinations? How should these individuals be placed on the departmental seniority list?'

In addressing these questions great reliance was placed in the case of *Babin vs. Houma Municipal Fire and Police Civil Service Board*, 327 So.2d 682 LA. App. 1st Cir. 1976). That reliance was misplaced.

The central issue before the court in *Babin* was whether an acting fire chief had power to appoint a permanent captain to the position of probational district chief or whether the power to appoint rested solely with the appointing authority. The court held that the power to appoint rested with the appointing authority.

The question in *Babin* was not one of seniority.

Recently, the position of this department, relative to the computation of

seniority for fire and police civil servants, was set forth in Attorney General Opinion Nubmer 77-1301. Therein, we stated that:

'Computation for seniority begins on the date of confirmation or, in absence of express confirmation, at the conclusion of the working test period which may not exceed one year of the date of appointment; provided, that the employee was eligible and appointed to the position from an appropriate employment list.'

Our opinion therein rested upon LA. R.S. 33:2473(2) and (18) and s 2495. Our opinion in Opinion Number 77-1301 is reinstated here. (A copy of Number 77-1301 is attached).

We now turn to the questions raised in Opinion Number 79-980, which are stated hereinabove.

LA. R.S. 33:2495, in pertinent part, provides as follows:

'Every person appointed to a position in the classified service . . . shall be tested by an working test while occupying the position before he may be confirmed as a regular and permanent employee in the position.

The period of the working test shall commence immediately upon appointment and shall continue for a period of not less than six months nor more than one year . . .

'Upon any employee completing his working test, the appointing authority shall so advise the board and furnish a signed statement to the respective employee of its confirmation and acceptance of the employee as a regular and permanent employee in the respective position, or of its refusal to confirm the employee and the reasons therefor . . . ' (Emphasis supplied.)

In this light, Firefighter No. 1 became a regular and permanent employee as of the date of his confirmation. LA. R.S. 33:2495. Therefore, we are of the opinion that Firefighter No. 1 has more seniority than Firefighter No. 2 because Firefighter No. 1 became a regular and permanent employee five and one-half months before Firefighter No. 2. Seniority begins upon confirmation, whether express or implied, to regular and permanent employment. LA. R.S. 33:2473(2) and (18).

Accordingly, Firefighter No. 1 should be promoted to the next class first, assuming that he passes the necessary examination. Moreover, Firefighter No. 1 should be placed above Firefighter No. 2 on the seniority list.

We trust that this will serve in answer to your request. Please contact us in the future when we may be of assistance.

Very truly yours,

William J. Guste, Jr.  
Attorney General

By: Charles L. Patin, Jr.

Assistant Attorney General

La. Atty. Gen. Op. No. 79-980A, 1979 WL 39106 (La.A.G.)

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